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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,175	02/27/2002	Barry Lynn Butler		1719

7590 04/02/2010
Dr. Barry Lynn Butler
980 Santa Estella
Solana Beach, CA 92075

EXAMINER

BASICHAS, ALFRED

ART UNIT	PAPER NUMBER
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3743

MAIL DATE	DELIVERY MODE
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04/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/085,175	Applicant(s) BUTLER, BARRY LYNN	
	Examiner Alfred Basichas	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite language not found in the specification as originally filed. Specifically, the terms “vapor”, “only fluid”, and “replacement fluid only” and the concepts associated therewith are not found in the specification as originally filed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public

use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, as understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Moore (3,661,202), which shows all of the claimed limitations including, among other things, a closed heat transfer loop (see at least fig. 16), a one-way out pressure relief valve and a one-way in vacuum relief valve (see at least fig. 18) plumbed in parallel from the highest point in the solar system to the bottom of an unpressurized, partially filled overflow/recovery reservoir 36, and excluding air (see at least col. 3, lines 37-39). Moor inherently is configured to accommodate fluid thermal expansion and contraction, as such is unavoidable and anything else would make the device inoperable.

5. Claims 2, 3, and 13, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hardy (4,360,003), which shows all of the claimed limitations including, among other things, a one-way out pressure relief valve 74 and a one-way in vacuum relief valve 65 plumbed in parallel from the highest point in the solar [collection] system (see at least col. 6, lines 39-44) to the bottom of an unpressurized, partially filled overflow/recovery reservoir 36 (see at least figures 2 and 3). Hardy recites that such an arrangement provides for over-temperature and over-pressure protection (see at least last line of claim 1).

Response to Arguments

6. Applicants' arguments with regard to the rejected claims have been considered, but are not deemed fully persuasive and are moot in view of the new grounds for

rejection under 35 U.S.C. 112, first paragraph, as necessitated by the amendments to the claims.

a. Applicant again asserts that Moor's loop is hermetically sealed, while applicant's loop is not hermetically sealed because it lets fluid in and out. Nevertheless, there is no mention in Moor of being "hermetically sealed". In fact, Moor clearly discusses letting fluid out and back in again (see at least col. 21 and 22). **Nevertheless, even if Moor were hermetically sealed, there is no language in the claims to exclude such condition that is supported by the specification as originally filed.** In addition, applicant is advised that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In other words, applicant should point out any claimed limitations that are missing from the prior art, rather than general differences which are not recited in the claims.

b. Applicant again asserts that Hardy fails to anticipate the claimed invention, but points to the drawings and the detailed description to show differences between the invention disclosed by the instant application and that disclosed by Hardy. Applicant is again reminded of the above remarks regarding reading the specification into the claims. While the inventions disclosed by an application and a prior art reference may be completely different, the prior art reference may still anticipate the "claimed" invention where the claims are broad and fail to

include sufficient distinguishing structure. **While there may be clear differences in the two inventions, the question of patentability resides in whether the “claimed” invention is anticipated. As long as the prior art shows each and every component claimed, the prior art anticipates the claim. The limitations recited in the claims are given their broadest reasonable interpretation. Applicant is also advised, that the inclusion in the prior art of additional structure not recited in the claims does not take away from the rejection as the claims are not recited in such a way as to exclude additional structure.**

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

April 3, 2010

/Alfred Basichas/
Primary Examiner, Art Unit 3743